

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

TERRY ANDRE WILLIAMS,

Plaintiff,

v.

No. CIV 08-0035 MV/RHS

THE CITY OF ALBUQUERQUE, NEW  
MEXICO POLICE DEPARTMENT,  
ALBUQUERQUE POLICE OFFICER (A.P.D.)  
SST T. SIMBALLA (MAN # 2464),  
ALBUQUERQUE POLICE OFFICER (A.P.D.)  
PI/C STEPHENSON (MAN #3008),

Defendants.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), to review Plaintiff's civil rights complaint. Plaintiff is incarcerated, appearing pro se, and proceeding in forma pauperis.

The complaint alleges that Defendant Simballa stopped Plaintiff's car for a traffic infraction and then arrested Plaintiff on a probation violation warrant. Plaintiff contends that the original stop resulted from racial profiling. Defendant Stephenson then arrived at the scene, and Defendants searched Plaintiff's person and his car. The personal search included pulling down his pants. Plaintiff claims that the seizure and searches violated his rights under the Fourth, Eighth, and Fourteenth Amendments as well as other federal and state law. The complaint seeks damages and certain equitable relief.

Because the alleged violations occurred while Plaintiff was a pretrial detainee, his Eighth Amendment Claim will be construed under the Due Process Clause. *See Bell v. Wolfish*, 441 U.S.

520, 535 n. 16 (1979); *Lopez v. LeMaster*, 172 F.3d 756, 759 (10th Cir. 1999); and see *Roman-Nose v. New Mexico Dep't of Human Services*, 967 F.2d 435, 436-37 (10th Cir. 1992) (stating that plaintiff's pro se characterization of his claims as arising under § 1983 is not dispositive). Furthermore, Plaintiff's claims against the Defendant Police Department will be construed as directed at the City itself. See *Martinez v. Winner*, 771 F.2d 424, 444 (10th Cir. 1985). As thus amended, Plaintiff's complaint will be forwarded to Defendants for service.

IT IS THEREFORE ORDERED that the Clerk is directed to correct the docket caption of this case by deleting Defendant City of Albuquerque Police Department and adding the City of Albuquerque as a Defendant;

IT IS FURTHER ORDERED that the Clerk is directed to issue summons and a copy of the complaint for service on the City of Albuquerque; and to issue notice and waiver of service forms for the individual Defendants.

Robert Hayes Scott  
UNITED STATES MAGISTRATE JUDGE